IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 119 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME TAX

Versus

MIHIR TEXTILE LTD

Appearance:

1. INCOME TAX REFERENCE No. 119 of 1986
MR BB NAIK with MR MANISH R BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 12/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

The following three questions have been referred to us for opinion:-

(i) Whether the Tribunal has not erred in law and on facts in holding that the order of the CIT made under section 263 of the Income Tax Act, 1961 was without jurisdiction as the order of the ITO was made under section 144B of the Income Tax Act, 1961 ?

(ii) Whether, the CIT has no jurisdiction to take proceedings under sec. 263 of the Income Tax Act, 1961 if the order was made under sec. 144B of the Income Tax Act, 1961, by the Inspecting Asstt. Commissioner by the ITO with the concurrence of IAC's direction ?

(iii) Whether on the facts the Tribunal was right in law in holding that payment of premium for deferred annuity policy was not in the nature of revenue expenditure ?

2. The first two questions which have been referred to us at the instance of revenue are now concluded by unreported judgment of this Court in ITR No.120 of 1986 dated 9-7-2001. For the reasons stated in the said judgment, we hold that the Tribunal had erred in law in holding that the order made by CIT u/s.263 of the Income Tax Act, 1961 was made without jurisdiction as the assessment order made by the I.T.O. was under section 144B of the Act. In the earlier decision, this Court has specifically held that merely because the assessment order is made after receipt of directions u/s.144 B from the Inspecting Assistant Commissioner it does not cease to be an assessment order framed by the Income Tax Officer.

3. The two questions referred to us at the instance of the Commissioner are, therefore, answered in the negative i.e. in favour of the revenue and against the assessee.

4. The third question has been referred at the instance of the assessee. Though served, none has appeared on behalf of the assessee.

The said question is also concluded by decision of this Court in the case of Gujarat Steel Tubes Ltd. vs. CIT 210 ITR 358. It has been held that the amount paid as premium for acquiring deferred annuity policy is in the nature of a capital expenditure and is not allowable

under sec. 37 of the Act. Question No.3 is, therefore, answered following the aforesaid decision in the affirmative i.e. in favour of the revenue and against the assessee.

5. The Reference stands disposed of accordingly with no order as to costs.

(M.S. Shah,J)

(D.A. Mehta,J)

zgs/-